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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/807,290	07/16/2001	Reinhard Evers	WK-188	5951

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EXAMINER

PARSLEY, DAVID J

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 03/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/807,290	Applicant(s) EVERS ET AL.	
	Examiner David J Parsley	Art Unit 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 11-13 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 11-13 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 April 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

Detailed Action

Amendment

1. This office action is in response to applicant's amendment dated 12-15-03 and this action is non-final.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-7 and 11-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear to whether the two elements of the third element are the first and second elements or separate elements.

Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are: between the measuring device, first element, second element, third

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element, control unit, scraping device and means connecting the measuring device via the control unit to the scraping device.

Claim 1 recites the limitation "the transport direction" in line 13. There is insufficient antecedent basis for this limitation in the claim.

Claims 2-7 depend from rejected claim 1 and include all of the limitations of claim 1 thereby rendering these dependent claims indefinite.

Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are: between the two scraping devices and the measuring device, first element, second element, third element, control unit and means connecting the measuring device via the control unit to the scraping device.

Claim 5 recites the limitation "the tender sinew" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim 6 recites the limitations "the wish bone" and "the body joint" in lines 4 and 5 respectively. There is insufficient antecedent basis for these limitations in the claim.

Claim 11 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear to what the first, second and third elements are mounted.

Claims 12-13 depend from rejected claim 11 and include all of the limitations of claim 11 thereby rendering these dependent claims indefinite.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1-7 and 11 are rejected under 35 U.S.C. 102(a) as being anticipated by U.S.

Patent No. 6,059,684 to Kodama et al.

Referring to claim 1, Kodama et al. discloses a device for removing fillets from eviscerated carcasses of poultry comprising, at least one measuring device – see figures 10a-10b, for measuring the individual dimensions of a poultry carcass to find a starting point for loosening the fillets from the carcass, the measuring device comprising, a first element – at 60 for detecting a first body joint point, a second element – at 61, detecting a second body joint point, and a third element – at 58-59, which is mounted behind the first and second elements and consists of two elements for detecting the first and second body joint points respectively – see for example figures 10a-10b where the third element detects the joint points via controlling items 60-61, at least one control unit – the control unit is inherent in that the device is electrically powered and automatically powered and driven, and at least one scraping device – at 63, and means connecting the measuring device via the control unit to the at least one scraping device – at 63 for the purpose of communicating, wherein the measuring device is designed for detection of body joint points, and each scraping device includes a disc-like scraping element – see for example figures 1-13b.

Referring to claim 2, Kodama et al. discloses two scraping devices – at 63, are provided – see for example figure 13a.

Referring to claim 3, Kodama et al. discloses the at least one scraping device comprises at least two disc-like scraping elements – at 63.

Referring to claim 4, Kodama et al. discloses the at least one scraping element – at 631 is of rotatable construction.

Referring to claim 5, Kodama et al. discloses the at least one scraping device includes an element for pulling back the tender sinew of the carcass– see for example figures 14-15 and column 23.

Referring to claim 6, Kodama et al. discloses the disc-like scraping elements are of pivotable construction such that the circumferential surfaces of the discs are arranged so that they can be rolled over the wishbone from the body joint of the poultry carcass – see for example figures 13a-13b.

Referring to claim 7, Kodama et al. discloses in front of the at least one scraping device in the direction of conveying is arranged at least one measuring device – see for example figures 1-2.

Referring to claim 11, Kodama et al. discloses a method for removing fillets from eviscerated carcasses of poultry including the steps of, introducing carcasses of poultry into a device for removing fillets – see for example figures 1-13, detecting individual carcass dimensions, to find a starting position for loosening the fillets from the carcass, by recording poultry carcass-specific data by a first element – at 60, for detecting a first body joint point, by a second element – at 61, for detecting a second body joint point wherein the body joint points are

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detected one after another, and by a third element – at 58-59, which is mounted behind the first and second elements – see for example figures 10a-10b, controlling at least one scraping device – at 63, as a function of the detected specific carcass data and positioning scraping elements on previously determined body joint points – see for example figures 10-13, subsequently detaching fillets from a poultry carcass skeleton by the scraping elements which are formed in a disc shape construction – see for example figures 11-13, and completely detaching the fillets by subsequent scraping tools – at 65a-65b see for example figure 11b.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kodama as applied to claim 11 above, and further in view of U.S. Patent No. 5,021,024 to Villemin.

Referring to claim 12, Kodama does not disclose detection of the poultry carcass dimensions is effected by mechanical sensing of body joint points. Villemin et al. does disclose the detection of the carcass dimensions is effected by mechanical sensing of the body joint points – see for example figure 3 and columns 4-5. Therefore it would have been obvious to one of ordinary skill in the art to take the method of Kodama and add the mechanical sensing of

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Villemin, so as to make the allow for direct contact of the carcass to determine the position and dimensions of the carcass thus making the measuring more accurate.

Referring to claim 13, Kodama does not disclose the two sides of the poultry carcass are processed one after the other. Villemin et al. does disclose the two sides of the poultry carcass are processed one after the other – see for example figure 3 and columns 4-5. Therefore it would have been obvious to one of ordinary skill in the art to take the method of Kodama and add the two sides of the poultry carcass processed one after the other of Villemin et al., so as to effect accurate removal of the fillets from the carcass.

Response to Arguments

5. Regarding claims 1 and 11, in response to applicant's arguments, the recitation of the extremities of the carcass all being totally detached from the carcass has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

Further, the Kodama et al. reference US 6059648 does disclose the three elements of the measuring device – at 58-61 and the measuring device does determine the joint points of the carcass in that the shoulder joint locations are determined so as to effect cutting of the wings from the carcass – see for example column 20 and figures 10-13.

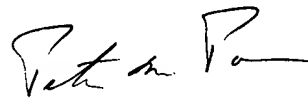
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Further, the Kodama reference shows disc like scraping elements – at 63 and/or 65a-65b to remove the fillets from the carcass – see for example figures 11a-11b.

Conclusion

6. Any inquiry concerning this communication from the examiner should be directed to David Parsley whose telephone number is (703) 306-0552. The examiner can normally be reached on Monday-Friday from 7:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon, can be reached at (703) 308-2574.



Peter M. Poon
Supervisory Patent Examiner
Technology Center 3600

3/12/04